

ASSEMBLY BILL

No. 870

Introduced by Assembly Member Dickerson

February 25, 1999

An act to amend Section 667.61 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 870, as introduced, Dickerson. Sentencing.

Under existing law, any person convicted of a felony violation of any specified sex offense under one or more specified circumstances, or 2 or more other specified circumstances, shall be punished by imprisonment in the state prison for life with the possibility of parole after not less than 25 years. If only one of the other specified circumstances is present, the person is required to be punished by imprisonment in the state prison for life with the possibility of parole after not less than 15 years.

This bill instead would provide that any person convicted of a felony violation of any specified sex offense under any one or more of the circumstances specified in the above provision, shall be punished by imprisonment in the state prison for life with the possibility of parole after not less than 25 years.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.61 of the Penal Code is
2 amended to read:

3 667.61. (a) A person who is convicted of an offense
4 specified in subdivision ~~(e)~~ (b) under one or more of the
5 circumstances specified in subdivision ~~(d)~~ or under two
6 or more of the circumstances specified in subdivision ~~(e)~~
7 (c) shall be punished by imprisonment in the state prison
8 for life and shall not be eligible for release on parole for
9 25 years except as provided in subdivision ~~(j)~~ (h).

10 ~~(b) Except as provided in subdivision (a), a person~~
11 ~~who is convicted of an offense specified in subdivision (e)~~
12 ~~under one of the circumstances specified in subdivision~~
13 ~~(e) shall be punished by imprisonment in the state prison~~
14 ~~for life and shall not be eligible for release on parole for~~
15 ~~15 years except as provided in subdivision (j).~~

16 ~~(e)~~ This section shall apply to any of the following
17 offenses:

18 (1) A violation of paragraph (2) of subdivision (a) of
19 Section 261.

20 (2) A violation of paragraph (1) of subdivision (a) of
21 Section 262.

22 (3) A violation of Section 264.1.

23 (4) A violation of subdivision (b) of Section 288.

24 (5) A violation of subdivision (a) of Section 289.

25 (6) Sodomy or oral copulation in violation of Section
26 286 or 288a by force, violence, duress, menace, or fear of
27 immediate and unlawful bodily injury on the victim or
28 another person.

29 (7) A violation of subdivision (a) of Section 288, unless
30 the defendant qualifies for probation under subdivision
31 (c) of Section 1203.066.

32 ~~(d)~~

33 (c) The following circumstances shall apply to the
34 offenses specified in subdivision ~~(e)~~ (b):

35 (1) The defendant has been previously convicted of an
36 offense specified in subdivision ~~(e)~~ (b), including an
37 offense committed in another jurisdiction that includes



1 all of the elements of an offense specified in subdivision
2 ~~(e)~~ (b).

3 (2) The defendant kidnapped the victim of the
4 present offense and the movement of the victim
5 substantially increased the risk of harm to the victim over
6 and above that level of risk necessarily inherent in the
7 underlying offense in subdivision ~~(e)~~ (b).

8 (3) The defendant inflicted aggravated mayhem or
9 torture on the victim or another person in the commission
10 of the present offense in violation of Section 205 or 206.

11 (4) The defendant committed the present offense
12 during the commission of a burglary, as defined in
13 subdivision (a) of Section 460, with intent to commit an
14 offense specified in subdivision ~~(e)~~ (b).

15 ~~(e) The following circumstances shall apply to the~~
16 ~~offenses specified in subdivision (e):~~

17 ~~(1)~~

18 (5) Except as provided in paragraph (2) ~~of subdivision~~
19 ~~(d)~~, the defendant kidnapped the victim of the present
20 offense in violation of Section 207, 209, or 209.5.

21 ~~(2)~~

22 (6) Except as provided in paragraph (4) ~~of subdivision~~
23 ~~(d)~~, the defendant committed the present offense during
24 the commission of a burglary, as defined in subdivision
25 (a) of Section 460, or during the commission of a burglary
26 of a building, including any commercial establishment,
27 which was then closed to the public, in violation of Section
28 459.

29 ~~(3)~~

30 (7) The defendant personally inflicted great bodily
31 injury on the victim or another person in the commission
32 of the present offense in violation of Section 12022.53,
33 12022.7, or 12022.8.

34 ~~(4)~~

35 (8) The defendant personally used a dangerous or
36 deadly weapon or firearm in the commission of the
37 present offense in violation of Section 12022, 12022.3,
38 12022.5, or 12022.53.

39 ~~(5)~~



1 (9) The defendant has been convicted in the present
2 case or cases of committing an offense specified in
3 subdivision ~~(e)~~ (b) against more than one victim.

4 ~~(6)~~

5 (10) The defendant engaged in the tying or binding of
6 the victim or another person in the commission of the
7 present offense.

8 ~~(7)~~

9 (11) The defendant administered a controlled
10 substance to the victim by force, violence, or fear in the
11 commission of the present offense in violation of Section
12 12022.75.

13 ~~(f)~~

14 (d) If only the minimum number of circumstances
15 specified in subdivision ~~(d)~~ ~~or~~ ~~(e)~~ (c) which are required
16 for the punishment provided in subdivision (a) ~~or~~ ~~(b)~~ to
17 apply have been pled and proved, that circumstance or
18 those circumstances shall be used as the basis for imposing
19 the term provided in subdivision (a) ~~or~~ ~~(b)~~ rather than
20 being used to impose the punishment authorized under
21 any other law, unless another law provides for a greater
22 penalty. However, if any additional circumstance or
23 circumstances specified in subdivision ~~(d)~~ ~~or~~ ~~(e)~~ (c) have
24 been pled and proved, the minimum number of
25 circumstances shall be used as the basis for imposing the
26 term provided in subdivision (a), and any other
27 additional circumstance or circumstances shall be used to
28 impose any punishment or enhancement authorized
29 under any other law. Notwithstanding any other law, the
30 court shall not strike any of the circumstances specified
31 in subdivision ~~(d)~~ ~~or~~ ~~(e)~~ (c).

32 ~~(g)~~

33 (e) The term specified in subdivision (a) ~~or~~ ~~(b)~~ shall
34 be imposed on the defendant once for any offense or
35 offenses committed against a single victim during a single
36 occasion. If there are multiple victims during a single
37 occasion, the term specified in subdivision (a) ~~or~~ ~~(b)~~ shall
38 be imposed on the defendant once for each separate
39 victim. Terms for other offenses committed during a



1 single occasion shall be imposed as authorized under any
2 other law, including Section 667.6, if applicable.

3 ~~(h)~~

4 (f) Probation shall not be granted to, nor shall the
5 execution or imposition of sentence be suspended for, any
6 person who is subject to punishment under this section
7 for any offense specified in paragraphs (1) to (6),
8 inclusive, of subdivision ~~(e)~~ (b).

9 ~~(i)~~

10 (g) For the penalties provided in this section to apply,
11 the existence of any fact required under subdivision ~~(d)~~
12 ~~or (e)~~ (c) shall be alleged in the accusatory pleading and
13 either admitted by the defendant in open court or found
14 to be true by the trier of fact.

15 ~~(j)~~

16 (h) Article 2.5 (commencing with Section 2930) of
17 Chapter 7 of Title 1 of Part 3 shall apply to reduce the
18 minimum term of 25 years in the state prison imposed
19 pursuant to subdivision (a) ~~or 15 years in the state prison~~
20 ~~imposed pursuant to subdivision (b)~~. However, in no case
21 shall the minimum term of 25 ~~or 15~~ years be reduced by
22 more than 15 percent for credits granted pursuant to
23 Section 2933, 4019, or any other law providing for conduct
24 credit reduction. In no case shall any person who is
25 punished under this section be released on parole prior to
26 serving at least 85 percent of the minimum term of 25 ~~or~~
27 ~~15~~ years in the state prison.

